

SEP 26 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

TAI CHIEN HUANG,

Petitioner - Appellant,

v.

JOHN ASHCROFT, Attorney General;
JAMES W. ZIGLAR, Commissioner of the
Immigration & Naturalization Service;
THOMAS J. SCHILTGEN, District Director
of the Immigration & Naturalization Service,

Respondents - Appellees.

No. 02-56647

D.C. No. CV-00-11802-GHK

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
George H. King, District Judge, Presiding

Submitted September 11, 2003**
Pasadena, California

Before: KLEINFELD, WARDLAW, and W. FLETCHER, Circuit Judges.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

This is an appeal from the dismissal of a habeas petition, not a petition for review of a BIA or other INS decision, so our review is limited to whether Huang was deprived of a constitutional or other legal right.¹ Assuming that he is correct that the IJ overlooked the AUSA's representation that he would be subject to a threat, this is ordinary trial error, not constitutional error. His claim of insufficient weight given to the hardship on his now-adult daughter goes merely to the exercise of discretion, not constitutional error. No prejudice is shown for the factual error as to when Huang committed his crimes or for the long delay by the BIA in deciding his appeal.²

AFFIRMED.

¹ Gutierrez-Chavez v. INS, 298 F.3d 824 (9th Cir. 2002).

² See id. at 830.